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In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 773

JOSEPH A. F. VALENTI,

Appellant,

v.

NELSON A. ROCKEFELLER, Governor of the State of New York, and JOHN P. LOMENZO, Secretary of State of the State of New York,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK

SUPPLEMENT TO PETITION FOR REHEARING

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ELECTION OF SENATORS.

FEBRUARY 16, 1892.—Referred to the House Calendar and ordered to be printed.

Mr. TUCKER, from the Select Committee on the Election of President and Vice-President and Representatives in Congress, submitted the following

REPORT:

[To accompany H. Res. 90.]

Mr. Tucker, from the Committee on the Election of President and Vice-President and Representatives in Congress, submits the following report:

The joint resolution which has been referred back favorably by the Committee on the Election of President and Vice-President and Representatives in Congress is as follows:

JOINT RESOLUTION proposing an amendment to the Constitution providing that Senators shall be elected by the people of the several States.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That in lieu of the first paragraph of section three of article one of the Constitution of the United States, and in lieu of so much of paragraph two of the same section as relates to the filling of vacancies, and in lieu of all of paragraph one of section four of said article one, in so far as the same relates to any authority in Congress to make or alter regulations as to the times or manner of holding elections for Senators, the following be proposed as an amendment to the Constitution, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the States:

"The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

"The times, places, and manner of holding elections for Senators shall be as prescribed in each State by the legislature thereof.

"When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Provided*, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election, as the legislature may direct.

"This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution."

It seeks to change and annul the following provisions of the Constitution—Article I, section 3, clause 1:

The Senate of the United States shall be composed of two Senators from each State, chosen by the legislature thereof for six years; and each Senator shall have one vote.

It is proposed to change this so that it will read as follows:

The Senate of the United States shall be composed of two Senators from each State, *elected by the people thereof* for six years; and each Senator shall have one vote;

and adding thereto the qualifications of electors, providing that they shall be the same as those for Representatives in Congress. So much of

clause 2, section 3 of Article I as relates to the mode of filling vacancies is changed in the manner and form set forth in the proposed joint resolution.

ARTICLE I, section 4, clause 1 is as follows:

> The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

It is proposed to abrogate and annul the above in so far as it gives to Congress any control, absolute or remote and contingent, over the election of United States Senators by substituting the following language or so much thereof as refers to the election of Senators:

> The times, places, and manner of holding elections for Senators shall be as prescribed in each State by the legislature thereof.

In the resolutions proposed by Mr. Edmund Randolph, of Virginia, to the Federal convention for ratification it was provided—

> 5. *Resolved*, That the members of the second branch (the Senate) of the National Legislature ought to be elected by those of the first, out of a proper number of persons nominated by the individual legislatures, etc.

In the draft of a Federal Government by Mr. Chas. Pinckney, of South Carolina, it was provided that the Senate should be chosen by the House of Delegates (Representatives)—and in the draft submitted by Mr. Hamilton it was proposed to elect Senators to hold during good behavior—"their election to be made by electors chosen for that purpose by the people" (Elliott, I, 212). On agreeing to the fifth resolution of Mr. Randolph *nine States* voted nay, none voted yea, and one was divided (Jour. Fed. Con., 36).

On motion of Mr. Wilson (Pennsylvania) to elect Senators by the people, it passed in the negative—ten States voting *nay*, and Pennsylvania alone voting *yea* (Jour. Fed. Con., 106). Finally, June 25th, 1787, on motion to elect Senators by the legislatures of the several States it was agreed to—nine States voting *yea* and two States (Pennsylvania and Virginia) voting *nay* (Jour. Fed. Con., 147).

Representation in the Senate seems to have been one of the chief—if not *the* principal—causes of dissension in the Federal Convention—one party, led by Mr. Madison and others, insisting that representation should be proportionate to numbers and by districts, similar to the mode of representation in the House; the other party (the small States) insisting with equal pertinacity that the States, as States, should be the units of representation. The struggle was protracted, bitter, and passionate, and at one time it seemed as though the convention would go to pieces on this question. Better counsels finally prevailed and the small States were victorious, establishing the representation of the States, as such, as the units of representation.

Any amendment to the Constitution which sought to break down this initial principle in its construction would indeed be dangerous; this proposed amendment seeks only to emphasize that principle by giving the representation to the sovereign power in the State, rather than to the delegated power of that sovereignty as represented in the legislature.

I.

The change of mode of election of Senators from the legislature to the people, as proposed, has the sanction of almost a universal popular demand. This is not conclusive of the propriety of the proposed

change, but is strongly persuasive of the inadequacy of the present plan.

Your committee submit the following reasons for recommending the proposed change:

(1) The legislature, being a body of limited numbers, is more amenable to undue influence and the corrupting power of corporate aggressions and individual wealth than would be the entire population of a State.

The public press for years (in each recurring year) has been teeming with legislative scandals in the election of Senators until bribery and corruption are, we fear, in some localities, fast becoming recognized as a part of the legislative function, while the capacity of the pocketbook rather than that of the head is regarded in like places as the measure of Senatorial equipment. Committees of investigation and the grand juries of the States have been unwilling or unable to detect the frauds, so skillful have the manipulators of it become until, at last, an outraged public sentiment has become aroused and has found its just expression in the proposed amendment.

(2) *Power and responsibility* should go together, hand in hand. In a Republic like ours the representative of political power, for the good of the Republic, should be answerable for his acts to some *certain constituency*. To whom, we ask, is a Senator now answerable for his conduct? To the legislature? This body changes three times during his service. A Senator elected to-day for six years by a legislature comes back in six years seeking reëlection before another legislature composed of almost entirely new men. His pledges to the body that elected him are *nudum pactum* to the new legislature, which was not a party to the contract of his service or to his pledges.

(3) The States made the Constitution. It was a compromise between those in the Federal Convention who desired a strictly national government and those who strove for a purely federal union. The representation in the Senate was the result of the demand (an ultimatum) on the part of the smaller States, inasmuch as representation in the House of Representatives was to be proportionate to population, that in the Senate the States as such were to be represented. They were to be the units of representation. The State, as a political organization, is not represented by the legislature any more than it would be by the Judicial Department of the Government or the Executive. The ultimate sovereignty of the State rests alone with the people or with their accredited chosen representatives in convention assembled.

Surely, then, the creature (the legislature) is not the equal of the creator (the sovereign people), while the State, as a political organization, is more fitly represented by the sovereign power of the State than by one of the mere creatures of its sovereignty, and the plan proposed preserves the State as the unit of representation in the Senate, and at the same time leaves the choice to the people, who are the sovereign power in the State.

(4) It is the duty of the legislature of each State, by law, to lay off the legislative districts in the State. Under the present mode of election of Senators, the legislatures may be induced to make an unfair apportionment, and lay off unequal and unfair districts in order that the party temporarily in control in the legislature may reap the reward of the election of one of its partisans to the Senate and defeat the popular choice of the majority party in the State.

This system of gerrymandering a State is notorious, and the disposition to adopt it seems to be on the increase in many of the States. This

evil would be greatly modified by the adoption of the proposed amendment.

(5) State and Federal affairs should, as far as possible, be kept distinct and separate for the purity of each and the betterment of both. The administration of the local affairs of the people, in the protection of their personal and property rights and the maintenance of peace and good order in society, has most properly been reserved by the States to themselves. The point of contact, in our system of government, with the people, where personal rights are to be protected and the home guarded, is for the most part (as it ought to be entirely) with the State or local government. To the State legislatures, the law-making power of the several States, the people look to redress their local wrongs and protect their local rights.

These same legislatures, under the present system, possess the electoral function in the selection of Senators. The money which corrupts, by purchase, the member of the legislature for Senatorial elections has debauched him as a servant of the people he is sworn to serve in local legislation. The corporation that can enter the halls of a legislature and lay its unholy hands upon the members, claiming them as its own in the selection of a Senator, has already destroyed the hope of a pure administration of the local affairs of the people of that State by polluting the source from which such administration is derived. Under the specious guise of interest merely in the Senatorial election, legislatures are debauched and the purchased member in the Senatorial election can hardly pose as the *unbought* and *unpurchasable* tribune of the people's local rights. If the charges of corruption in Senatorial elections are true, the reflex action on the legislation in the States, incident to such corruption, must be immeasurable in its destruction of the rights and liberties of the people of the States.

II.

It is provided that such elections shall be held at the times, places, and in the manner as prescribed by the legislatures of the States.

(1) Corporate interference in the election of Senators and the corrupt use of money, as openly charged in the public press of the country and believed by many, have finally crystallized public sentiment in favor of the election of Senators free from any outside influence, whether it be *corporate*, *individual*, or *governmental*.

(2) This clause simply guarantees that the States shall elect their Senators in their own way, as to them may seem proper, without Federal supervision, as they have been elected since the foundation of the Government; for no attempt has ever been made in the history of the Government to apply Federal supervision to the election of Senators.

(3) If a condition of things could be imagined when it would be both constitutional and proper to apply Federal authority to the election of Representatives in Congress, we submit that its application to the election of representatives of sovereign States (Senators)—the units of constitutional organization—is a very different proposition.

III.

Where vacancies occur the executive of the State shall direct writs to issue for holding the election by the people to fill the vacancies; or, by law, the legislature may empower the executive to fill the same temporarily until an election can be had.

Under this clause the governor must order an election to fill the vacancy that has occurred. This preserves the principle of election by the people. In some States, however, in which there are annual elections, this would be a hardship, for the vacancy would in most cases not be of long duration, and to add another State election would be imposing an unnecessary expense on the people, so that the proviso was thought to be wise by which the governor may be empowered to fill the vacancy "until the people fill the vacancy by election, as the legislature may direct."

Under this provision in a State where there are biennial elections the legislature might direct that if a vacancy occurred within a year [or any other period it might fix] after the election, the vacancy should be filled by an election by the people; but if the vacancy occurred more than a year after the election the vacancy should be filled by executive appointment. This optional feature in the filling of vacancies was as far as your committee deemed it prudent to go in this direction.

IV.

That the title of no Senator may be affected who at the time of the adoption of the amendment holds his seat at the hands of the legislature of his State as now provided by the Constitution, the last provision is inserted out of abundant caution.

Finally, we submit this amendment, not in the belief that it is a cure for all the evils complained of by the people, but with confidence that it will eradicate many such evils and will have a healthful tendency to check the increase of others. That better men will *in all cases* be selected we do not claim or hope for, but the wholesome influence on political parties of the knowledge that from the nominating convention the appeal will be made direct to the people for their suffrages, none will deny; and the bribe-giver and the corruptionist will not dare to face the scorn of an enlightened constituency, even though by intrigue and fraud he could compass his nomination in convention.

ELECTION OF UNITED STATES SENATORS.

FEBRUARY 16, 1892.—Referred to the House Calendar and ordered to be printed.

Mr. BUSHNELL, from the Select Committee on Election of President and Vice-President and Senators and Representatives in Congress, submitted the following as the

VIEWS OF THE MINORITY.

[To accompany H. Res. 90.]

The amendment proposed by the committee would *compel* every State to elect their United States Senators by a direct vote of the people. Such an amendment we believe much less likely to be adopted by a two-thirds vote of the two Houses of Congress and the legislatures of three-fourths of the States, than one which will leave each State free to make choice between this method and the present method of electing Senators by the State legislatures. All desirable reforms ought to advance along the lines upon which they will meet with the least resistance.

The purpose of this minority of the committee is to report a constitutional amendment that will *permit* the election of United States Senators by direct vote of the people, when the people of any State shall so desire, and not *compel* any State to do so, if they prefer to retain the present method.

To that end, they recommend as a substitute for the resolution reported by the majority of the committee, the adoption of the following:

JOINT RESOLUTION proposing an amendment to the Constitution so as to permit the choosing of United States Senators by a direct vote of the people when any State shall so prefer.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That this Fifty-second Congress hereby proposes to the legislatures of the several States the following amendment to the Constitution of these United States, in addition to the existing provisions thereof, as to the manner of choosing United States Senators and filling Senatorial vacancies, that is to say:

Add at the end of the first paragraph of section 3, of article I, the words, "*Provided*, That such Senators may be elected by a direct vote of all of the electors of any State qualified to vote for members of the most numerous branch of the State legislature, whenever such State shall, by law, so provide; and when so elected a plurality shall elect, and if vacancies happen the executive of the State may make temporary appointments until an election can be held for the rest of the term," so that as amended said paragraph will read as follows:

"The Senate of the United States shall be composed of two Senators from each State, chosen by the legislature thereof, for six years; and each Senator shall have one vote: *Provided*, That such Senators may be elected by a direct vote of all of the electors of any State qualified to vote for members of the most numerous branch of the State legislature, whenever such State shall by law so provide; and when so elected a plurality shall elect, and if vacancies happen the executive of the State may make temporary appointments until an election can be held for the rest of the term."

Upon the adoption of this resolution the President shall cause the same to be submitted to the legislatures of the several States, as soon as may be, for their ratification or rejection; and if ratified by three-fourths of such legislatures, the same shall be of full force and effect, and the President shall make due proclamation thereof.

This would leave the people of every State free to provide, by constitutional or legislative enactment, for the election of their United States Senators by a direct vote of the people, if they so desired, and do nothing else.

There is an increasing sentiment in favor of the election of United States Senators directly by the people. Some of the reasons for it are:

(1) It is generally believed, whether true or false, that in some States, United States Senators have been elected by the bribery and corruption of members of the legislatures electing them; and that thereby men have gained seats in the Senate of the United States, whom the people of their State would never have chosen to go there, and who never would have gone there, but for the corrupt use of money to secure their election.

Yet, seldom has an investigation been had by that body, as to the methods used by any Senator to secure his election. There is a growing tendency toward Senators becoming representatives in that body, of their own wealth, or the wealth that placed them there, rather than of the people of their State. This high office ought to be the people's reward for great public services rendered, noble patriotism, high ability, and true statesmanship, and not a means of profit, or the prize of the highest bidder.

(2) It will do away with the legislative gerrymandering of the States to secure the election of United States Senators, by the party happening to be in power when each new apportionment is made. That this has long been the common practice, no fair-minded, intelligent man will deny. That it will continue, until the temptation to it is removed, or our fundamental law otherwise changed, is to be reasonably expected. The law of retaliation, to some extent, will always be applied.

The gerrymandering, used by a struggling people who have at last come into power, to break the bonds imposed on them by its use, creates no surprise, and little just recrimination.

(3) Our Government ought to be made more sensitive to the will of the people. It is now less so than are some constitutional monarchies.

Some of the framers of our Constitution sought to guard against what they thought might prove too great power in the hands of the people. They were afraid of trusting them too far. The republic was an experiment. There was some leaning toward monarchism. They provided safeguards against what they feared might be the impulsive, inconsiderate, and unreasonable demands of the uneducated masses of the people, and sought to prevent too sudden changes of policy in the administration of the government.

They fixed the presidential term at four years, and provided for the election of the President, not directly by a vote of the people, but by an electoral college. They fixed the senatorial term at six years, and required Senators to be elected, not by a direct vote of the people, but by the State legislatures. They made the term of Representatives in Congress two years; and a little later, it was provided that this House of Congress, which stands nearest to the people, and is the most responsive to their will, should not meet and begin to have a voice in the making of our laws or as to any matter of public policy, for more than a year after their election; and when met, they are powerless to change

any law, or enact a new one, without the consent of the Senate and President.

For a hundred years, this distrust of the people, as embodied in our national Constitution, has stood congealed, fixed, and immovable.

The cause of free government, in the several States, has steadily advanced, until now, in the best governed among them, the will of the intelligent masses of the people, is truly sovereign.

The idea that all governments derive "their just powers from the consent of the governed;" that the will of the people shall rule; upon which the fathers of the Republic, cautiously and fearingly, founded our government, exemplified and expanded, tried, tested and not found wanting, as it has been in the several States, has spread triumphant over the whole western hemisphere. It has crossed the Atlantic, and swept over Europe. Thrones have crumbled before it, and out of their wrecks, or upon their ruins, have been builded governments whose administration is immediately responsible and responsive, to the will of the people, through their elected lawmakers.

And wherever, among the civilized nations of the earth, the true sovereignty of the people is denied, or sought to be abridged or suppressed, may be observed the ominous mutterings of discontent, constant dread of nihilistic bombs, signs of socialistic upheaval, or the earnest voice of protest and respectful prayer for relief, which those charged with the execution of the sovereign will, of right, servants, and not masters of the people, will do well to heed.

The right given to elect United States Senators by a direct vote of the people, will be a step in advance for the great Republic; a step toward making our national Government more directly responsible, and more quickly responsive, to the will of the people. It is but a short step in that direction. We owe it to ourselves, we owe it to the world, to take at least that constitutional step.

A. R. BUSHNELL,
R. E. DOAN.

61ST CONGRESS, 3d Session. | SENATE. | REPORT No. 961.

ELECTION OF SENATORS BY POPULAR VOTE.

JANUARY 11, 1911.—Ordered to be printed.

Mr. BORAH, from the Committee on the Judiciary, submitted the following

REPORT.

[To accompany S. J. Res. 134.]

A joint resolution for the amendment of the Constitution of the United States for the election of Senators by popular vote was referred to the committee.

The joint resolution which has been referred back favorably by the committee is as follows:

JOINT RESOLUTION Proposing an amendment to the Constitution providing that Senators shall be elected by the people of the several States.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That in lieu of the first paragraph of section three of Article One of the Constitution of the United States, and in lieu of so much of paragraph two of the same section as relates to the filling of vacancies, and in lieu of all of paragraph one of section four of said Article One, in so far as the same relates to any authority in Congress to make or alter regulations as to the times or manner of holding elections for Senators, the following be proposed as an amendment to the Constitution, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the States:

"The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

"The times, places, and manner of holding elections for Senators shall be as prescribed in each State by the legislature thereof.

"When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Provided*, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election, as the legislature may direct.

"This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution."

II.

The first draft of the Constitution submitted to the Constitutional Convention of 1787 by Edmund Randolph provided as follows:

Resolved, That members of the second branch of the national legislature ought to be elected by those of the first out of a proper number of persons nominated by the individual legislators, etc.

The draft of the Constitution submitted by Mr. Pinckney was practically the same, to wit:

The Senate shall be elected and chosen by the house of delegates.

The draft submitted by Mr. Hamilton provided as follows:

The Senate to consist of persons elected to serve during good behavior; their elections to be made by electors chosen for that purpose by the people. In order to do this the States to be divided into election districts.

The 11 propositions submitted by Mr. Patterson do not seem to have covered the subject at all; in fact Mr. Patterson's scheme was really to strengthen the old confederation.

Gouverneur Morris proposed that the Senators be appointed by the President to serve for life and without compensation.

Mr. Wilson of Pennsylvania urged that the election of Senators be made by the people.

The vote was taken on the election by the lower branch of the legislature and was lost. Dickinson afterwards moved that they be elected or chosen by the individual legislators. A substitute was offered for this referring the election to the people. The substitute was defeated and the method of choosing through the State legislatures was thereupon adopted.

III.

One can not in reading the proceedings and debates of the convention fail to notice the limited amount of discussion on the subject of the mode or manner of electing Senators. Some of the reasons urged in the debate would certainly not avail at this time, and would not under present conditions and after a century of experience in the rule of the people be advanced by anyone. Gouverneur Morris thought it desirable that the Senate be made up of men of great and established wealth, that thus they might keep down the "turbulency of democracy."

Roger Sherman said:

The people immediately should have as little to do as may be about the Government. They lack information and are constantly liable to be misled.

Mr. Gerry said:

The evils we experience flow from the excess of democracy. The people do not want virtue, but are the dupes of pretended patriots.

Mr. Dickinson states that the Senate should bear as strong a resemblance to the House of Lords of England as possible.

It is a noticeable fact that almost all parties who opposed the election of Senators by popular vote or by the people also opposed the election of Representatives by the people, and assign almost the same reasons.

These fears were not unnatural at that time, and especially in view of the experience of history and our own experience under the Confederation.

Mr. Wilson of Pennsylvania was the strongest advocate and practically the sole advocate in the convention of the election of Senators by popular vote. He said among other things:

If we are to establish a national government, the government ought to flow from the people at large. * * * I wish the Senate to be elected by the people as well as the other branch.

We ought not to overlook, either, a statement by Mr. Madison, although we do not contend that he advocated election of Senators by popular vote.

The great fabric to be raised would be more stable and durable if it should rest upon the solid foundation of the people themselves rather than if it should stand merely on the pillars of the legislature.

IV.

We do not find any discussion whatever in the State conventions which ratified the Constitution on the mode of electing Senators. It was only referred to once or twice incidentally and seems not to have received any serious or extended discussion at any time. Neither was it discussed in the current literature of the day to any great extent. It was referred to in the Federalist by Mr. Hamilton (No. XXVII), and also by Mr. Hamilton or Mr. Madison in No. LXII.

In the last number of the Federalist referred to we find this paragraph:

It is equally unnecessary to dilate on the appointment of Senators by the State legislatures. Among the various modes which might have been devised for constituting this branch of the Government, that which has been proposed by the convention is probably the most congenial with public opinion. It is recommended by the double advantage of favoring a select appointment and of giving to the State governments such an agency in the formation of the Federal Government as must secure the authority of the former and may form a convenient link between the two systems.

Nothing less could have been said upon the subject if the subject was to be referred to at all.

It is proper to take into consideration the condition of affairs with reference to popular voting at the time of the formation of the Constitution. Very few of the States gave to their citizens the unqualified right to vote and very few allowed the people the right to elect any considerable number of officials. Most of the offices in the State were filled by appointment, some by the legislature, some by the chief executive. For a number of years the legislature had been practically a gathering of the people, that is to say, the body through which they acted in sundry matters not strictly legislative. A vast change has taken place since then. At the present time practically all the officers from precinct officer to the President are elected, with certain exceptions as to the judiciary. The President, in view of the function now performed by the electors, is in reality elected by popular vote. Manhood suffrage has everywhere become general and practically unqualified.

We do not cite these historic facts for the purpose of in any way seeking to impeach or criticize the remarkable men who framed our Constitution. In the science of government none have ever excelled the men who gathered at Philadelphia for the great task of 1787. The general principles of government which they announced and incorporated into the charter few indeed would challenge. But in the mechanism or machinery by which those general principles are applied from decade to decade, or century to century, there may

arise the necessity of change. The economic, social, and industrial changes which have taken place since the present method of electing Senators was established seem to require a reconsideration of the method; not for the purpose of changing the fundamental principles of our Government, but for the purpose of maintaining the very principles which the fathers sought to establish.

V.

It has been urged that if the method of electing Senators is changed then we must be prepared to consider the proposition of a change with reference to the equal representation in the Senate. It is said that the older States and the more populous States will not long submit to equal representation if the old method of electing Senators is disposed of through amendment. The method or mode of electing Senators had nothing to do in the convention with the question of equal representation in the Senate by the States. The compromise which was effected between the large States and the small States with reference to representation was not influenced one way or the other by the mode of electing Senators. Had the fathers seen fit to say that the Senators should be elected by popular vote the compromise between the large and small States would have been precisely the same. It would still have been necessary, in order to frame the Constitution, to meet upon the basis upon which they did meet, to wit, equal representation in the Senate and proportionate representation in the House. A thorough search of the records of that date will not disclose that anyone contended that the method or mode of electing Senators was a part of the compromise between the large and the small States. There would be the same necessity and the same reason for equal representation after the adoption of this proposed amendment as before. The equal representation of the States can not be taken away without the consent of all the States. There is scarcely any danger of such a change. At least, if there is any such danger, it could neither be augmented nor retarded by a change in the mode of electing Senators.

VI.

It is also said that the change in the method of electing Senators will operate to change the nature of the organization of our Government and of the relations which the States bear to the Federal Union and of the relations which the Senators bear to the States and to the people thereof. It was undoubtedly in the minds of the fathers that the Senators should in a peculiar sense represent the State something as an ambassador. That idea naturally arose out of the fact that the States had been separate and independent sovereignties, and regarded each other to a great extent as wholly independent States. But that condition has been modified both in fact and as a theory. The Senators of a State would be just as thoroughly representative of the State if elected by the people as they are when elected by the legislature. In what possible way could the mode of choosing Senators change his relations to the State or people thereof? It might change his relations to certain interests and certain forces within the State, but if we are to suppose that a State consists of all the people and of

all the interests, will he not still be its representative in every sense when his election comes from all the people of his State?

This amendment does not propose in any way to interfere with the fundamental law save and except the method or mode of choosing the Senators. It will still be the duty of the Senator to see that the States respectively are not denied any of the rights to which they are justly entitled under our system of government. It will still be the duty and the pride of the Senator to see that the Commonwealth which he represents in its entirety has that full representation to which it is entitled under the fundamental law. The change will consist in bringing him more thoroughly in touch with all the interests and all that makes up a great State, and that is certainly desired.

VII.

There is much force in the argument that the framework of our Government should be changed only after long deliberation and consideration. The fathers exhibited no greater wisdom than when they provided against sudden changes of the framework of the Government. But in proposing this amendment, we are proposing a proposition which has been up for discussion for at least three quarters of a century. Certainly no complaint can be had at this time as to haste or lack of consideration. Aside from the proposition that Mr. Wilson urged the matter in the Convention of 1787, as early as 1826 a resolution was submitted in Congress looking to this change in the method of electing Senators. The subject has been before Congress session after session. It has met the approval of the first branch of Congress many times. It has received serious discussion here upon different occasions by some of the ablest men who have occupied seats in the Senate. At least 31 States have declared in favor of the amendment or the principle. It has been the subject of years of discussion of editors and publishers. Literature on the subject is very extensive, and now, after so long a period of discussion and consideration, the earnest, sober, second thought of the people, upon which the fathers relied so implicitly, is greatly in its favor. May not we trust ourselves to trust that wisdom? Is it not well to preserve in the form of an amendment to the Constitution, the public opinion so long in forming and so persistently maintained?

In order that those who may care to go further into the literature of these years than this report can do, there is placed in the report the following list of speeches and articles and reports touching the subject:

Ames, Herman V. The proposed amendments to the Constitution of the United States during the first century of its history. (In American Historical Association. Annual report for the year 1896, Vol. II. Washington, 1897. 442 pp. 8°.) Popular Election of Senators, pp. 21, 60-63.

Bailey, Joseph W. Election of United States Senators. Remarks, May 9, 1902. (In Congressional Record; vol. 35, pt. 5, pp. 5205-5210.) Favors popular election.

——— Same. Remarks, June 11, 1902. (In Congressional Record, vol. 35, pt. 7, p. 6591.) Favors popular election.

Barkworth, T. E. Should United States Senators be elected by the people. With discussion by A. C. McLaughlin, E. V. Robinson, R. A. Hinsdale, H. C. Adams, and D. B. Waldo. (In Michigan Political Science Association. Publications, vol. 1, May, 1893, pp. 78-97.)

Barney, Samuel S. Election of Senators by the people. Speech, May 11, 1898. (In Congressional Record, vol. 31, pt. 8, Appendix, pp. 441-442.) Favors popular election.

Bartlett, Franklin. Election of United States Senators by the people. Remarks, July 20, 1894. (In Congressional Record, vol. 26, pt. 8, 7773–7774.) Against popular election.

Berry, James H. Election of Senators by direct vote. Remarks, March 11, 1902. (In Congressional Record, vol. 35, pt. 3, pp. 2615–2617.) Favors popular election.

——— Same. Speech, May 9, 1902. (In Congressional Record, vol. 35, pt. 5, pp. 5203–5204, 5207, 5208.) Favors popular election.

——— Same. Remarks, June 11, 1902. (In Congressional Record, vol. 35, pt. 7, pp. 6588, 6590, 6593–6596.) Favors popular election.

Blackburn, J. C. S. Election of United States Senators. Remarks, April 11, 1902. (In Congressional Record, vol. 35, pt. 4, pp. 3984–3987.) Favors popular election.

——— Same. Remarks, May 9, 1902. (In Congressional Record, vol. 35, pt. 5, pp. 5205–5206.) Favors popular election.

——— Same. Remarks, June 11, 1902. (In Congressional Record, vol. 35, pt. 7, pp. 6593–6595.) Favors popular election.

Boutell, Lewis Henry. Roger Sherman in the Federal Convention. (In American Historical Association. Annual report, 1893, pp. 229–247.) Also printed as U. S. 53d Congress, 2d session. Senate Miscellaneous Document No. 104.

Breazeale, Phanor. Election of United States Senators. Remarks, April 12, 1900. (In Congressional Record, vol. 33, pt. 5, pp. 4118–4119.) Favors popular election.

Bryan, William J. Election of United States Senators by the people. Remarks, July 12, 1892. (In Congressional Record, vol. 23, pt. 6, pp. 6071, 6072.) Favors popular election.

——— Same. Remarks, July 20, 1894. (In Congressional Record, vol. 26, pt. 8, pp. 7775–7777.) Favors popular election.

Burgess, John W. The election of United States Senators by popular vote. (In Political Science Quarterly, vol. 17, Dec., 1902, pp. 650–663.)

Burrows, Julius C. Election of Senators by direct vote. Remarks, March 11, 1902. (In Congressional Record, vol. 35, pt. 3, p. 2616.) Favors popular election.

——— Same. Remarks, May 9, 1902. (In Congressional Record, vol. 35, pt. 5, p. 5204.) Favors popular election.

——— Same. Election of United States Senators. Remarks, June 11, 1902. (In Congressional Record, vol. 35, pt. 7, pp. 6593, 6594.) Favors popular election.

Bushnell, A. R. Election of United States Senators by the people. Speech, July 12, 1892. (In Congressional Record, vol. 23, pt. 6, pp. 6066–6067.) Favors popular election.

Capron, Adin B. Election of Senators by the people. Remarks, May 11, 1898. (In Congressional Record, vol. 31, pt. 5, pp. 4812, 4815.) Favors popular election.

Chandler, William E. Election of Senators by the people. Speech, April 12, 1892. (In Congressional Record, vol. 23, pt. 4, pp. 3191–3201.) Unfavorable to popular election.

——— Election of Senators by direct vote. Speech, June 5, 1896. (In Congressional Record, vol. 28, pt. 7, pp. 6157–6159, 6160.) Against popular election.

——— Election of Senator by popular vote. (In The Independent, vol. 52, May 31, 1900, p. 1292.) Unfavorable.

Chipman, J. Logan. Election of United States Senators by the people. Remarks, July 12, 1892. (In Congressional Record, vol. 23, pt. 6, pp. 6060, 6078.) Favors popular election.

Clapp, Moses E. Election of United States Senators. Speech, June 11, 1902. (In Congressional Record, vol. 35, pt. 7, pp. 6590–6593, 6596.) Favors popular election.

Clark, E. P. Electing Senators by popular vote. (In The Nation, vol. 74, Mar. 20, 1902, p. 222.)

Clark, Walter. The election of Senators and the President by popular vote, and the veto power. (In The Arena, vol. 10, Sept., 1894, pp. 451–461.) Favorable.

——— The election of United States Senators by the people. (In Green Bag, vol. 10, Jan., 1898, pp. 4–6.) Strongly favorable.

Corliss, J. B. Election of Senators by the people. Speech, May 11, 1898. (In Congressional Record, vol. 31, pt. 5, pp. 4809–4812.) Favors popular election.

Corliss, J. B. Election of United States Senators. Speech, April 12, 1900. (In Congressional Record, vol. 33, pt. 5, pp. 4109-4111.) Favors popular election.

——— Same. Remarks, February 13, 1902. (In Congressional Record, vol. 35, pt. 2, pp. 1721, 1722.)

Crane, Condit. In the seats of the mighty. (In The Outlook, vol. 61, Jan. 7, 1899, pp. 27-34.) Unfavorable to popular election of Senators.

Cummings, Amos J. Election of United States Senators by the people. Remarks, July 12, 1892. (In Congressional Record, vol. 23, pt. 6, p. 6076.) Favors popular election.

——— Election of Senators by the people. Remarks, May 11, 1898. (In Congressional Record, vol. 31, pt. 5, p. 4815.) Favors popular elections.

De Armond, D. A. Election of United States Senators by the people. Remarks, July 12, 1892. (In Congressional Record, vol. 23, pt. 6, pp. 6077-6078.) Favors popular election.

——— Same. Speech, July 19, 1894. (In Congressional Record, vol. 26, pt. 8, pp. 7724-7727.)

De Forest, Robert E. Election of United States Senators by the people. Speech, July 20, 1894. (In Congressional Record, vol. 26, pt. 8, pp. 7771-7773.) Favors popular election.

Depew, Chauncey M. Election of United States Senators. Remarks [submitting amendment], April 10, 1902. (In Congressional Record, vol. 35, pt. 4, pp. 3925-3926.) Against popular election.

——— Election of United States Senators. Speech, April 11, 1902. (In Congressional Record, vol. 35, pt. 4, pp. 3979-3981, 3987.) Against popular election.

——— Election of United States Senators. Remarks, May 9, 1902. (In Congressional Record, vol. 35, pt. 5, pp. 5205-5208.) Against popular election.

Dickinson, John. The letters of Fabius in 1788, on the Federal Constitution * * * with additional notes. (In his Political Writings, vol. 2, pp. 67-165. Wilmington [Del.], 1801. 8°.) Defends the method of election and compensation of the Senate under the provisions of the Constitution.

Direct election of Senators. (In The American Monthly Review of Reviews, vol. 26, Dec., 1902, pp. 644-645.)

Direct election of Senators. (In The Independent, vol. 54, July 10, 1902, pp. 1672-1674.)

Doan, Robert E. Election of United States Senators by the people. Remarks, July 12, 1892. (In Congressional Record, vol. 23, pt. 6, pp. 6069-6070.) Favors popular election.

Dockery, A. M. Election of Senators by the people. Remarks, May 11, 1898. (In Congressional Record, vol. 31, pt. 5, p. 4819.) Favors popular election.

Dubois, F. T. Election of Senators by direct vote. Remarks, March 11, 1902. (In Congressional Record, vol. 35, pt. 3, p. 2617.) Favors popular election.

Dungan, Irvine. Election of United States Senators by the people. Remarks, July 12, 1892. (In Congressional Record, vol. 23, pt. 6, pp. 6075-6076.) Against popular election.

Edmunds, George F. Should Senators be elected by the people? (In The Forum, vol. 18, Nov., 1894, pp. 270-278.) Unfavorable.

The Election of Senators. (In Public Opinion, vol. 12, Feb. 20, 1892, p. 560; Feb. 27, 1892, p. 524.) Press comments.

The Election of Senators. (In Public Opinion, vol. 14, Jan. 28, 1893, pp. 391-393.) Quotations from press. Favorable.

The Election of Senators. (In Public Opinion, vol. 15, Apr. 15, 1893, p. 46.) Press comments.

The Election of Senators by popular vote. (In The Independent, vol. 55, Jan. 8, 1903, pp. 106-107.)

Election of Senators. Press comment. (In Public Opinion, vol. 28, Apr. 26, 1900, pp. 516-518.) Favors popular election.

Everett, William. Election of United States Senators by the people. Remarks, July 20, 1894. (In Congressional Record, vol. 26, pt. 8, pp. 7776-7777.) Against popular election.

The Federalist. Edited by Henry Cabot Lodge. New York & London, G. P. Putnam's Sons, 1888. xlv (l), 586 pp. 8°. Election of Senators by State legislatures, etc., pp. 160, 385-386. It has not been thought necessary to note here all the editions of the Federalist. The various editions are described in P. L. Ford's Bibliography of the Constitution.

Flagg, John H. The choice of United States Senators. (In New England Magazine, n. s., vol. 14, Apr., 1896, pp. 190-194.)

Foraker, Joseph B. Election of United States Senators. Remarks, May 9, 1902. (In Congressional Record, vol. 35, pt. 5, pp. 5205, 5208, 5209.) Against popular election.

——— Same. Remarks, June 11, 1902. (In Congressional Record, vol. 35, pt. 7, pp. 6594, 6595.) Against popular election.

Fox, C. F. Popular election of United States Senators. (In The Arena, vol. 27, May, 1902, pp. 455–467.)

Gantz, Martin K. Election of United States Senators by the people. Remarks, July 12, 1892. (In Congressional Record, vol. 23, pt. 6, pp. 6067-6069.) Favors popular election.

Garrison, Wendell Phillips. Popular elections of Senators. (In The Nation, vol. 54, Jan. 21, 1892, p. 44.) Favorable.

——— The reform of the Senate. (In The Atlantic Monthly, vol. 68, Aug., 1891, pp. 227–234.) Strongly favorable to popular election.

Griffin, Appleton Prentiss Clark, compiler. Debates in the Federal convention of 1787, held at Philadelphia, on the election of Senators. June 11, 1902. 14 pp. 8°. (U. S. 57th Cong., 1st sess. S. Doc. No. 404.)

——— Same. Reprinted in U. S. 57th Congress, 1st session. Senate Document No. 405, pages 23-36.

Grosvenor, Charles H. Election of Senators by the people. Speech, July 20, 1894. (In Congressional Record, vol. 26, pt. 10, appendix, pt. 2, p. 1352.) Against popular election.

——— Same. Remarks, May 11, 1898. (In Congressional Record, vol. 31, pt. 5, pp. 4811, 4812.) Against popular election.

Hamilton, Alexander. Speech on the Senate of the United States. (In his Works, edited by Henry Cabot Lodge, vol. 1, pp. 448–496. New York, 1885. 8°.)

Harris, William A. The election of Senators by the people. (In The Independent, vol. 52, May 31, 1900, p. 1291.) Favorable. "He [the Senator] should be brought more closely in touch with the great masses of the people, who should have greater liberty of choice in his selection."

Hawley, Joseph R. Election of Senators by direct vote. Speech, June 5, 1896. (In Congressional Record, vol. 28, pt. 7, p. 6161.) Against popular election.

Haynes, John. Popular election of United States Senators. (In Johns Hopkins University studies in historical and political science, 11th series, Nov.–Dec., 1893, pp. 547–569.)

Henderson, David B. Election of United States Senators by the people. Remarks, July 12, 1892. (In Congressional Record, vol. 23, pt. 6, p. 6076.) Favors popular election.

——— Same. Remarks, May 11, 1898. (In Congressional Record, vol. 31, pt. 5, pp. 4814–4815.)

Hepburn, W. C. Election of United States Senators by the people. Remarks, July 20, 1894. (In Congressional Record, vol. 26, pt. 8, pp. 7777–7778.) Favors popular election.

Hoar, George Frisbie. The Connecticut compromise. Roger Sherman, the author of the plan of equal representation of the States in the Senate, and representation of the people in proportion to numbers in the House. Worcester, Mass.: Press of Charles Hamilton, 1903. 28 pp. 8°. Reprinted from the Proceedings of the American Antiquarian Society, October 21, 1902.

——— Election of Senators by direct vote of the people. Speech, April 3, 6, 7, 1893. (In Congressional Record, vol. 25, pt. 1, pp. 67, 97, 101–110.) Against popular election.

——— Same. Speech in the Senate April 6 and 7, 1893. Washington: [Government Printing Office], 1893. 30 pp. 8°. Reprinted from Congressional Record, vol. 25, pt. 1, pp. 101–110.

——— Election of Senators by direct vote. Remarks, March 11, 1902. (In Congressional Record, vol. 35, pt. 3, pp. 2616-2618.) Against popular election.

——— Election of United States Senators. Remarks, May 9, 1902. (In Congressional Record, vol. 35, pt. 5, pp. 5201-5209.) Against popular election.

——— Same. Remarks, June 11, 1902. (In Congressional Record, vol. 35, pt. 7, pp. 6590, 6593.) Against popular election.

——— The Senate. (In Youth's Companion, vol. 63, Nov. 13, 1890, p. 620.)

——— The Senate [a paper published in the Youth's Companion of November 13, 1890.] December 15, 1896, 9 pp. 8°. (U. S. 54th Cong., 2d sess. S. Doc. No. 20.)

Iowa. Legislature, 1904. Joint resolution for an application to the Congress of United States of America, in behalf of the State of Iowa, for the calling of a convention proposing amendments to the Constitution of the United States of America [for the election of United States Senators by a direct vote of the people], as provided in Article V of said Constitution. (In Congressional Record, vol. 38, Apr. 18, 1904, p. 5192.) Presented by Senator Dolliver.

Jones, William C. Election of Senators by the people. Speech, May 11, 1898. (In Congressional Record, vol. 31, pt. 8, appendix, pp. 456–458.) Favors popular election.

Kem, Omer M. Election of United States Senators by the people. Speech, July 12, 1892. (In Congressional Record, vol. 23, pt. 6, pp. 6072–6075.) Favors popular election.

Kenny, John T. The legislature that elected Mr. Hanna. (In The Arena, vol. 21, Mar., 1899, pp. 311–326.) Favorable to popular election.

Kerr, Clara Hannah. The origin and development of the United States Senate. Ithaca, N. Y.: Andrus & Church, 1895. vi, 197 pp. 8°. Election of Senators, pp. 15–20.

King, Rufus. The life and correspondence of Rufus King, comprising his letters, private and official, his public documents, and his speeches. Edited by Charles R. King. New York: G. P. Putnam's Sons, 1894–1900. 6 vols. Portraits. 8°. Election of Senators, vol. 1, pp. 595–599, 607–612.

Kirkpatrick, William S. Election of Senators by the people. Speech, May 11, 1898. (In Congressional Record, vol. 31, pt. 8, Appendix, pp. 460–462.) Favors popular election.

Kluttz, Theodore F. Election of United States Senators. Remarks, April 12, 1900. (In Congressional Record, vol. 33, pt. 5, pp. 4113, 4117.) Favors popular election.

Lanham, S. W. T. Election of United States Senators by the people. Remarks, July 12, 1892. (In Congressional Record, vol. 23, pt. 6, pp. 6070–6071.) Favors popular election.

Let us have popular election of Senators. (In The American Monthly Review of Reviews, vol. 27, April, 1903, pp. 400–401.)

Lloyd, James T. Election of United States Senators. Remarks, April 12, 1900. (In Congressional Record, vol. 33, pt. 5, pp. 4122–4123.) Favors popular election.

McComas, Louis E. Election of United States Senators. Remarks, June 11, 1902. (In Congressional Record, vol. 35, pt. 7, p. 6595.) Against popular election.

McDowell, John A. Election of Senators by the people. Speech, April 12, 1900. (In Congressional Record, vol. 33, pt. 8, Appendix, pp. 220–221.) Favors popular election.

McEttrick, Michael J. Election of United States Senators by the people. Speech, July 20, 1894. (In Congressional Record, vol. 26, pt. 8, pp. 7766–7770.) Favors popular election.

McEwan, T. Election of Senators by the people. Remarks, May 11, 1898. (In Congressional Record, vol. 31, pt. 5, pp. 4817–4818.) Favors popular election.

McLaurin, Anselm J. Election of United States Senators. Remarks, April 11, 1902. (In Congressional Record, vol. 35, pt. 4, pp. 3983–3984.) Favors popular election.

Mason, George. Senate appointed by State assemblies. (In Rowland, K. M. Life of George Mason, vol. 2, pp. 117–118. New York, 1892. 8°.) Reprint of Mason's remarks reported in Madison's debates.

Maxey, Edwin. Election of United States Senators. (In his Some questions of larger politics, pp. 67–75. New York, 1901. 12°.) Reprinted from "Self-Culture Magazine, June, 1900."

Moyer, Ernst Christopher. Nominating systems; direct primaries versus conventions in the United States. Madison, Wis.: Published by the author, 1902. xx (2), 501 pp. 8°. "The popular election of United States Senators," pp. 448–451.

Milliken, Seth L. Election of United States Senators by the people. Speech, July 20, 1894. (In Congressional Record, vol. 26, pt. 8, pp. 7770–7771.) Against popular election.

Mitchell, John H. Election of Senators by the people. Remarks, February 18, 1892. (In Congressional Record, vol. 23, pt. 2, p. 1270.) Favors popular election.

——— Election of Senators by direct vote. Speech, June 5, 1896. (In Congressional Record, vol. 28, pt. 7, pp. 6151–6152, 6161–6162.) Favors popular election.

Mitchell, John H. Election of Senators by the people. Remarks, March 11, 1902. (In Congressional Record, vol. 35, pt. 3, p. 2616.) Favors popular election.

——— Election of Senators by popular vote. (In The Forum, vol. 21, June, 1896, pp. 385-397.) Favorable.

——— Election of United States Senators. Remarks, May 9, 1902. (In Congressional Record, vol. 35, pt. 5, pp. 5206, 5209.) Favors popular election.

Moffett, S. E. Is the Senate unfairly constituted? (In Political Science Quarterly, vol. 10, June, 1895, pp. 248-256.)

Money, H. De S. Election of United States Senators. Speech, April 11, 1902. (In Congressional Record, vol. 35, pt. 4, pp. 3976-3979, 3983.) Favors popular election.

Morgan, John T. Election of United States Senators. Remarks, May 9, 1902. (In Congressional Record, vol. 35, pt. 5, pp. 5209–5210.) Against popular election.

Muller, Nicholas. Election of Senators by the people. Speech, April 12, 1900. (In Congressional Record, vol. 33, pt. 8, appendix, pp. 199-200.) Favors popular election.

Nelson, Henry Loomis. Shall Senators be chosen by the people? (In Harper's Weekly, vol. 44, Feb. 3, 1900, p. 113.) Favorable.

Northway, Stephen A. Election of United States Senators by the people. Speech, July 20, 1894. (In Congressional Record, vol. 26, pt. 8, pp. 7763–7760, 7770.) Against popular election.

Nullifying the popular will. (In the Independent, vol. 55, Jan. 29, 1903, pp. 278–279.) Cites the deadlock in the Colorado Legislature as enforcing the argument for popular election.

Palmer, John M. Election of Senators by the people. Speech, February 18, 1892. (In Congressional Record, vol. 23, pt. 2, pp. 1267–1270.) Favors popular election.

——— Same. Remarks, April 12, 1892. (In Congressional Record, vol. 23, pt. 4, pp. 3201–3204.) Favors popular election.

——— Election of Senators by direct vote. Speech, June 5, 1896. (In Congressional Record, vol. 28, pt. 7, pp. 6159–6161.) Favors popular election.

Penrose, Boies. Election of Senators by direct vote. Submitted amendment, March 14, 1902. (In Congressional Record, vol. 35, pt. 3, p. 2772.) Against popular election.

Perkins, George C. Election of Senators by direct vote. Speech, June 5, 1896. (In Congressional Record, vol. 28, pt. 7, pp. 6152–6156.) Favors popular election.

Pettus, E. W. Election of United States Senators. Remarks, May 9, 1902. (In Congressional Record, vol. 35, pt. 5, pp. 5205, 5209.) Against popular election.

Platt, Orville H. Election of United States Senators. Remarks, June 11, 1902. (In Congressional Record, vol. 35, pt. 7, p. 6594.) Against popular election.

Popular election of Senators. (In Public Opinion, vol. 24, May 26, 1898, p. 647.) "Open and serious question."

Popular election of Senators. (In The Outlook, vol. 70, Mar. 22, 1902, p. 695.)

Powers, H. Henry. Election of United States Senators by the people. Speech, July 12, 1892. (In Congressional Record, vol. 23, pt. 8, appendix, pp. 602-601.) Favors popular election.

——— Election of Senators by the people. Remarks, May 11, 1898. (In Congressional Record, vol. 31, pt. 5, pp. 4812–4814.) Favors popular election.

——— Election of United States Senators. Speech, April 12, 1900. (In Congressional Record, vol. 33, pt. 5, pp. 4112–4114.) Favors popular election.

Reed, Thomas B. Election of United States Senators by the people. Remarks, July 20, 1894. (In Congressional Record, vol. 26, pt. 8, p. 7777.) Against popular election.

Reform in Senatorial elections. (In the Arena, vol. 21, March, 1899, pp. 391-393.)

Representation in the United States Senate. (In the American Monthly Review of Reviews, vol. 27, Feb., 1903, pp. 219-220.)

Ridgely, E. R. Election of United States Senators by the people: Direct legislation and graduated tax. Speech, May 11, 1898. (In Congressional Record, vol. 31, pt. 8, appendix, pp. 690-695.) Favors popular election.

Robb, Edward. Election of United States Senators. Remarks, April 12, 1900. (In Congressional Record, vol. 33, pt. 5, pp. 4123–4124.) Favors popular election.

Rucker, W. W. Election of United States Senators. Remarks, April 12, 1900. (In Congressional Record, vol. 33, pt. 5, pp. 4109, 4110.) Favors popular election.

Russell, Alfred. Dissatisfaction with the Senate. (In Michigan Political Science Association. Publications, vol. 1, May, 1894, pp. 41-48.) Favors popular election.

Ryan, J. W. Election of United States Senators. Remarks, April 12, 1900. (In Congressional Record, vol. 33, pt. 5, pp. 4119-4121.) Favors popular election.

Scott, Owen. Election of United States Senators by the people. Remarks, July 12, 1892. (In Congressional Record, vol. 23, pt. 6, pp. 6078-6079.)

Senatorial deadlocks. (In Public Opinion, vol. 26, Mar. 30, 1899, p. 388.) Favorable to popular election.

Senatorial elections. (In Public Opinion, vol. 30, Jan. 31, 1901, p. 133.)

Senators and legislatures. (In The Outlook, vol. 61, Feb. 4, 1899, p. 258.) Favorable to popular elections.

Shafroth, John F. Election of Senators by the people. Remarks, May 11, 1898. (In Congressional Record, vol. 31, pt. 5, pp. 4818-4819, 4824.) Favors popular election.

Simpson, Jerry. Election of Senators by the people. Remarks, May 11, 1898. (In Congressional Record, vol. 31, pt. 5, pp. 4816-4817.) Favors popular election.

Small, John M. Election of Senators by the people. Speech, April 12, 1900. (In Congressional Record, vol. 33, pt. 8; Appendix, pp. 314-317.) Favors popular election.

Spooner, John C. Election of United States Senators. Remarks, May 9, 1902. (In Congressional Record, vol. 35, pt. 5, pp. 5205, 5206, 5208.) Against popular election.

Stewart, William M. Election of Senators by direct vote. Speech, March 11, 1902. (In Congressional Record, vol. 35, pt. 3, pp. 2617-2618.) Against popular election.

Sulzer, William. Election of Senators by the people. Speech, May 11, 1898. (In Congressional Record, vol. 31, pt. 8; Appendix, pp. 451-452.) Favors popular election.

——— Election of United States Senators. Remarks, April 12, 1900. (In Congressional Record, vol. 33, pt. 5, p. 4121.) Favors popular election.

Todd, Albert M. Election of Senators by the people. Speech, May 11, 1898. (In Congressional Record, vol. 31, pt. 5, pp. 4820-4824.) Favors popular election.

Tongue, Thomas H. Election of Senators by the people. Remarks, May 11, 1898. (In Congressional Record, vol. 31, pt. 5, p. 4819.) Favors popular election.

Tucker, Henry St. George. Election of United States Senators by the people. Speech, July 12, 1892. (In Congressional Record, vol. 23, pt. 6, pp. 6060-6066.) General discussion, pp. 6066-6079.

——— Same. Speech, July 20, 1894. (In Congressional Record, vol. 26, pt. 10, appendix 2, pp. 1131-1136.) Favors popular election.

Turpie, David. Election of United States Senators by the people. Speech, Dec. 17, 1891. (In Congressional Record, vol. 23, pt. 1, pp. 76-80.) Favors popular election.

——— Same. Speech, December 6, 1894. (In Congressional Record, vol. 27, pt. 1, pp. 73-76.) Favors popular election.

——— Same. Speech, February 6, 1896. (In Congressional Record, vol. 28, pt. 2, pp. 1382-1385.) Favors popular election.

——— Election of Senators by direct vote. Speech, March 23, 1897. (In Congressional Record, vol. 30, pt. 1, pp. 169-173.) Favors popular election.

Underwood, Oscar W. Election of Senators by the people. Remarks, May 11, 1898. (In Congressional Record, vol. 31, pt. 5, p. 4811.) Favors popular election.

United States. 43d Congress, 1st session. Senate Miscellaneous Document No. 66. Resolution of the legislature of California in favor of an amendment to the Constitution of the United States, providing that Senators may be elected by a direct vote of the people. February 18, 1874. 1 p. 8°.

——— Senate Miscellaneous Document No. 69. Resolution of the legislature of Iowa, in favor of an amendment to the Constitution, providing for the election of United States Senators by a direct vote of the people. February 19, 1874. 1 p. 8°.

——— 52d Congress, 1st session. Senate Report No. 794. Part 1. Report by Mr. Chandler from the Committee on Privileges and Elections presenting a statement of his views adverse to the passage of the joint resolution (S. Res. 8) for submitting to the States an amendment of the Constitution providing for the election of United States Senators by direct vote of the people. June 8, 1892. 3 pp. 8°.

United States. 57th Congress, 1st session. Senate Report No. 794. Part 2. Views of the minority. Report by Mr. Mitchell [of the Committee on Privileges and Elections favoring the election of United States Senators by a direct vote of the people]. July 1, 1892. 11 pp. 8°.

——— Senate Miscellaneous Document No. 89. Resolution relative to choosing United States Senators. March 7, 1892. 1 p. 8°.

——— House Report No. 368. Election of Senators. Report by Mr. Tucker, from the Select Committee on the Election of President and Vice-President and Representatives in Congress. February 16, 1892. 5 p. 8° Reports favorably on the "Joint resolution proposing an amendment to the Constitution providing that Senators shall be elected by the people of the several States."

——— House Report No. 368. Part 2. Election of United States Senators. Views of the minority. Report by Mr. Bushnell, of the Select Committee on Election of President and Vice-President and Senators and Representatives in Congress. Feb. 16, 1892. 3 pp. 8°. The minority report proposes "a constitutional amendment that will permit the election of United States Senators by direct vote of the people when the people of any State *shall so desire, and not* compel any State to do so, if they prefer to retain the present method."

——— 53d Congress, 2d session. Senate Miscellaneous Document No. 97. Resolution providing for amendments to the Constitution regulating the election of President and Vice-President of the United States, and the election of United States Senators by a direct vote of the people. Feb. 22, 1894. 1 page. 8°.

——— House Report No. 944. Election of Senators by the people. Report by Mr. Tucker, from the Committee on Election of President and Vice-President and Representatives in Congress. May 22, 1894. 7 pp. 8°. Includes House Report No. 368, 52d Congress, 1st session. Favors popular election.

——— 53d Congress, 3d session. Senate Report No. 916. Views of the minority of the Committee on Privileges and Elections, favoring the election of United States Senators by direct vote of the people, presented by Mr. Turpie. Feb. 12, 1895. 3 pp. 8°. Proposes an amendment to the Constitution by which Senators shall be elected by direct vote of the people.

——— Senate Miscellaneous Document No. 1. Resolution relative to election of United States Senators by direct vote of the people. Dec. 3, 1894. 1 page. 8°.

——— 54th Congress, 1st session. Senate Report No. 530. Report by Mr. Mitchell, from the Committee on Privileges and Elections, to whom was referred "Joint resolution proposing an amendment to the Constitution of the United States providing for the election of Senators by the votes of the qualified electors of the States." March 20, 1896. 11 pp. 8°. Favors popular election.

——— Senate Report No. 530, part 2, Views of the minority, presented by Mr. Chandler. June 5, 1896. 3 pp. 8°. Against popular election.

——— House Report No. 994. Election of the United States Senators. Report by Mr. Corliss, from the Committee on Election of President, Vice President, and Representatives in Congress. March 30, 1896. 6 pp. 8°. "The object of this resolution is to place in the hands of the people of the respective States the right, if they so elect by constitutional or legislative enactment, to afford the people the privilege of expressing by direct vote their will in the election of a United States Senator." Views of the minority, pp. 5-6. Favors popular election.

——— 55th Congress, 2d session. House Report No. 125. Election of United States Senators. Report by Mr. Corliss, from the Committee on Election of President, Vice President, and Representatives in Congress. January 12, 1898. 6 pp. 8°. Favors popular election. Views of the minority, pp. 5-6.

——— 56th Congress, 1st session. House Report No. 88. Election of United States Senators. Report by Mr. Corliss, from the Committee on Election of President, Vice President, and Representatives in Congress. January 22, 1900. 6 pp. 8°.

United States. 56th Congress, 1st session. House Report No. 88. Part 2. Same. Views of the minority, presented by Mr. Rucker. February 7, 1900. 2 pp. 8°. The majority report favors making optional with the States "the privilege of expressing by direct vote their will in the election of a United States Senator." The minority report advocates a constitutional amendment requiring that Senators "shall be elected by a direct vote of the people thereof for a term of six years."

——— 57th Congress, 1st session. Senate Document No. 399. Election of United States Senators by the people. List of principal speeches and reports made in Congress in recent years upon the proposed change. June 9, 1902. 2 pp. 8°.

——— ——— Senate Document No. 406. Election of United States Senators by the people. List of principal speeches and reports made in Congress in recent years upon the proposed change in the method of electing Senators. Also, a reprint of principal documents relating to the subject of the election of United States Senators. Prepared in the Senate Library, by Clifford Warden. Washington: Government Printing Office, 1902. 36 pp. 8°. Cover-title. Contains reprints of the following documents: 52d Congress, 1st session. Senate Mis. Doc. No. 89; 53d Congress, special session. Senate Mis. Doc. No. 31; 53d Congress, 2d session. Senate Mis. Doc. No. 97; 53d Congress, 2d session. Senate Mis. Doc. No. 101; 53d Congress, 3d session. Senate Mis. Doc. No. 1; 54th Congress, 2d session. Senate Doc. No. 26; 57th Congress, 1st session. Senate Doc. No. 401.

——— ——— House Report No. 125. Election of United States Senators. Report by Mr. Corliss, from the Committee on Election of President, Vice President, and Representatives in Congress. January 21, 1902. 6 pp. 8°. Favors popular election.

Vest, George G. Election of United States Senators. Remarks, June 11, 1902. (In Congressional record, vol. 45, pt. 7, pp. 6595, 6596.) Against popular election.

Wilson, James. Speech on choosing the members of the Senate by electors; delivered on 31st December, 1789, in the convention of Pennsylvania, assembled for the purpose of reviewing, altering, and amending the constitution of the State. (In his Works, vol. 3, pp. 313–336. Philadelphia, 1804. 8°.)

Winchester, Boyd. The House and the election of Senators. (In The Arena, vol. 24, July, 1900, pp. 14–20.) Unfavorable.

Ziegler, Edward D. Election of United States Senators. Remarks, April 12, 1900. (In Congressional Record, vol. 33, pt. 5, pp. 4114–4117.) Favors popular elections.

VIII.

It is believed that one of the great advantages to be gained by a change of the mode of electing Senators is that of leaving the State legislatures free and unembarrassed to attend to that legislation which the interests of the State require. It is frequently true that a senatorial election not only pushes aside all matters of local interest, in so far as the election of members to the legislature is concerned, but that it also occupies not only weeks, but sometimes months, or the entire session of the legislature, to the great detriment of the State's public business. Not only is legislation which ought to be had not had, public interests which ought to be cared for are not cared for, but charges of bribery arise and scandal attaches to the entire lawmaking department of the State.

IX.

The popular election of Senators would secure regular and equal representation in the Senate. During the last 20 years some 15 or 16 contests in different States have been carried on with such bitterness that the body charged with the duty of electing Senators proves powerless to perform its office. In several instances special sessions of the

legislature for the sole purpose of filling vacancies have occurred. A number of States have acceded to vacancies, and thus have been deprived of their equal suffrage in the Senate. There would seem to be no reason why such a system should still be maintained in the face of the fact that long years of experience have shown that judgment and wisdom and cleanliness prevail on the part of the people in selecting by popular election their governors and other important officials. It seems wholly unnecessary, in view of the enormous powers reserved to the States, and of the enormous amount of work which they ought to do and which they must do in order to preserve the integrity of our institutions in the development of our industrial life, to burden the State with a method of election which poisons oftentimes the source of the State's legislative power, demoralizes it, and involves and embarrasses and humiliates the whole Commonwealth, when as a matter of fact all might be done without any practical possibility of corruption, delay, embarrassment, or demoralization. Have we not advanced far enough in democratic government to rest securely upon the judgment and wisdom of the individual voter in the selection of those who are to represent the interests of the State in the National Senate?

We do not care to enter upon a discussion of the instances of bribery and corruption which have taken place in the legislatures of the different States in the last 25 years, and which could not have occurred had popular elections prevailed. In this respect we may profitably place alongside the election of the governors of the different States that of the election of the Senators, and in this way test the cleanliness of the one system and the corruption at times of the other. No one contends for a moment that it is the universal practice or the general rule that legislatures are thus corrupted, but it must be admitted by all that if those who desire to corrupt enter the field at all it is after the legislature has convened. How often is it true that no taint of wrongdoing or corruption attaches to the election until the legislature has convened. The small number of parties to be controlled, the possibility of logrolling with different local interests, of trading this or that against votes, is tempting indeed to those who seek a senatorship, not upon merit, but through sinister means.

X.

It should not be overlooked either that the election of Senators by popular vote would not only leave the nomination and election of the members of the legislature upon the simple issue of their fitness for that particular work, but it would place every candidate for the high place of Senator before the people, where his views and his relationship to the public interests of the State could be known and understood of all. There is nothing more important in the matter of selecting public officers than of having the candidate take into his confidence those whom he is to represent prior to the time that the certificate of election is issued.

XI.

Finally, we believe that some deference ought to be paid to public opinion. Public or popular opinion has taken hold of the subject, and the demand for this change has been continued and persistent,

distinct, pronounced, and imperative; in fact, it is almost unanimous among the great mass of the people. To yield to this demand is not to yield to passion or impulse, to inconsiderate judgment hastily formed, but it is yielding to that species of public opinion characterized by deliberation and judgment which is the basis of our institutions and the groundwork upon which we build under our form of government. It can not be said, if our theory of government is correct, that the judgment of the people thus formed and built up through the long process of years is to go unheeded. The idea which once prevailed that the people act in haste and with passion and without judgment is no longer tenable in this age, in which the best literature of the land reaches almost every American home every morning, and in which the common citizen takes an interest almost commensurate with the leading public men of 100 years ago.

May we not safely say, therefore, that something is due to public opinion in this country of ours, and under our form of government? Will anyone doubt that in providing for the election of Senators by the legislatures the fathers largely acquiesced in the prevailing opinions and customs of that day, as reflected in the records of history of those days? Are we not safe in accepting the universal opinion of this day as reflected in this universal demand for a change?

ELECTION OF SENATORS BY THE PEOPLE.

APRIL 12, 1911.—Referred to the House Calendar and ordered to be printed.

Mr. RUCKER of Missouri, from the Committee on Election of President, Vice President, and Representatives in Congress, submitted the following

REPORT.

[To accompany H. J. Res. 39.]

The Committee on Election of President, Vice President, and Representatives in Congress, to which was referred the joint resolution (H. J. Res. 39) proposing an amendment to the Constitution of the United States authorizing the election of Senators by a direct vote of the people of the several States, having considered the same, beg to report said joint resolution back to the House with the recommendation that it do pass.

As the joint resolution reported is in the exact words of Senate Joint Resolution 134, reported from the Senate Committee on the Judiciary in the Sixty-first Congress by Mr. Borah, your committee adopts the able and exhaustive report there made, omitting some portions of same.

II.

The first draft of the Constitution submitted to the Constitutional Convention of 1787 by Edmund Randolph provided as follows:

"*Resolved*, That Members of the second branch of the National Legislature ought to be elected by those of the first out of a proper number of persons nominated by the individual legislators, etc."

The draft of the Constitution submitted by Mr. Pinckney was practically the same, to wit:

"The Senate shall be elected and chosen by the House of Delegates."

The draft submitted by Mr. Hamilton provided as follows:

"The Senate to consist of persons elected to serve during good behavior; their elections to be made by electors chosen for that purpose by the people. In order to do this the States to be divided into election districts."

The 11 propositions submitted by Mr. Patterson do not seem to have covered the subject at all; in fact, Mr. Patterson's scheme was really to strengthen the old confederation.

Gouvernour Morris proposed that the Senators be appointed by the President to serve for life and without compensation.

Mr. Wilson of Pennsylvania urged that the election of Senators be made by the people.

The vote was taken on the election by the lower branch of the legislature and was lost. Dickinson afterwards moved that they be elected or chosen by the individual legislators. A substitute was offered for this referring the election to the people. The substitute was defeated, and the method of choosing through the State legislatures was thereupon adopted.

Same as Senate Report No. 961 in 61st Congress 3rd Session

62D CONGRESS
2d Session

SENATE

DOCUMENT
No. 603

RESOLUTION FOR THE DIRECT ELECTION OF SENATORS

ARTICLE

BY

HON. JOSEPH L. BRISTOW

UNITED STATES SENATOR
FROM THE STATE OF KANSAS

PRESENTED BY MR. BORAH
MAY 15, 1912.—Ordered to be printed

WASHINGTON
1912

THE DIRECT ELECTION OF SENATORS.

By Senator JOSEPH L. BRISTOW.

The really historic incident of the first session of the Sixty-second Congress was not the passing of the reciprocity bill, the enactment of the corrupt-practices act, the tariff discussion, or the admission of two new States, but the passing by the Senate of the joint resolution providing for the election of Senators by direct vote. Many tariff bills have passed the Senate, and many States have been admitted to the Union, but it has taken more than 60 years of effort to induce the Senate to agree to give the people an opportunity to change the method of electing its Members.

The fight for the direct election of Senators has been long and interesting. Among the numerous compromises that were agreed to by the framers of the Constitution was one providing for the election of Senators by the State legislatures instead of choosing them by appointment or by a popular election. After the animosities growing out of the discussion and adoption of the Constitution had passed away, for almost half a century there appeared to be little dissatisfaction with the method provided for the election of Senators. It was not until 1826 that any action was taken in Congress looking to a change in this provision of the Constitution. During that year Mr. Storrs, a Congressman from the State of New York, introduced a resolution providing for an amendment to the Constitution making Senators elective by a direct vote of the people. And since that date there has been a growing demand for such a change in our Constitution.

Mr. Storrs's effort was followed by the introduction of a similar resolution by Mr. Wright, of Ohio, on February 19, 1829. This resolution limited the senatorial term to four years. Six years afterward, in 1835, another resolution similar to that presented by Mr. Storrs was introduced, but no serious consideration was ever given to any of these resolutions. As time went on, however, the sentiment in favor of the direct election of Senators grew; and between 1850 and 1855 there were at least five such resolutions introduced in the lower House of Congress. None of them was ever reported from the committees to which they were referred.

The first resolution introduced in the Senate providing for a change in the method of electing Senators was presented on January 14, 1850, by Senator Clemens, of Alabama. It is interesting to note that the most ardent advocate of changing the method of choosing Senators, from election by the State legislatures to that of a direct vote of the people, was Andrew Johnson, of Tennessee. While a Member of the House of Representatives he introduced two resolutions providing for this change in the Constitution; and in 1860,

when a member of the Senate, he renewed the agitation. In 1868, when President of the United States, he sent a special message to Congress advocating the measure, and he repeated the same recommendations in his annual message. Johnson was the advocate not only of the direct election of Senators, but also of abolishing the electoral college and electing Presidents by a direct vote. If it had not been for the tragedies of the Civil War, which absorbed the attention of the public for so many years and which completely changed the course of Johnson's life, he might have accomplished more than he did in enlarging this democratic principle in our national affairs.

From the effort which Johnson made in 1860 there seems to have been no interest taken in the matter in the Senate until 1873. On January 31 of that year Mr. Harlan, of Iowa, introduced a resolution providing for the direct election of Senators, and in December of the same year Mr. Windom, of Minnesota, presented another. Both of these resolutions were referred to the Committee on Privileges and Elections, but never reported from the committee. In 1876 Mr. Wright, of Iowa, introduced another resolution, which was referred to the same committee, with a like result. The matter was then permitted to sleep for 10 years, when Senator Van Wyck, of Nebraska, introduced a resolution—December 16, 1886—which was referred to the Committee on Judiciary, but never reported. In 1888 Mr. Mitchell, of Oregon, introduced another resolution, which was referred to the Committee on Privileges and Elections, and met the fate of all that had preceded it.

The House of Representatives of the Fifty-second and Fifty-third Congresses passed resolutions providing for the direct election of Senators. These resolutions, when they reached the Senate, were referred to the Committee on Privileges and Elections, but none was reported until the third session of the Fifty-third Congress, when the committee reported one of the resolutions adversely. During the first session of the Fifty-fourth Congress there was a favorable report from the committee on a resolution that had passed the House of Representatives, but no action was taken by the Senate. Again, a resolution passed the House on May 11, 1898, by a vote of 185 to 11, but in the Senate it likewise met the fate of all that had preceded it.

On April 13, 1900, a resolution again passed the House by a vote of 240 to 15. When it reached the Senate it was referred to the Committee on Privileges and Elections, but never emerged from the committee room. Again, on February 13, 1902, the House passed a resolution by a practically unanimous vote, there being no division; but it, too, was buried in the Senate committee room. It will be noticed that the Senate itself has been the barrier that for over half a century has blocked the movement for the direct election of Senators. This year, for the first time, that barrier yielded to the force of public opinion and a resolution for such a change in our Constitution passed that body.

With the development during recent times of the great corporate interests of the country, and the increased importance of legislation relating to their affairs, they have tenaciously sought to control the election of Senators friendly to their interests. The power of these great financial and industrial institutions can be very effectively used in the election of Senators by legislatures, and they have many times

during recent years used that power in a most reprehensible and scandalous manner. They have spent enormous amounts of money in corrupting legislatures to elect to the Senate men of their own choosing.

Through the influence of the Senators so elected, who have become known as corporation Senators, legislation to control the trusts and monopolies has been smothered in committees and defeated in the Senate. Under the operation of our political institutions Senators exercise great influence in the appointment of Federal judges; and by controlling the election of Senators these great interests have to a large extent been able to secure the appointment of judges who are more devoted to their interests than to the public welfare. These various abuses have been responsible for the rapid growth of the sentiment for a change in the method of electing Senators and for the adoption of a method that would make the power of the great financial interests less potent.

So, as I said in the beginning, the first session of this Congress is made historic by passing through the Senate a resolution for the direct election of Senators by the people. The historian will record that in 1911, 85 years after the first resolution was introduced in the House of Representatives, a joint resolution providing for an amendment to the Constitution changing the method of electing Senators passed the Senate for the first time. The narrative of its passage, its imprisonment in a conference committee, and its final passage is an interesting story.

WHAT WENT ON IN SUBCOMMITTEE.

On December 13, 1909, I introduced a resolution in the Senate providing for the direct election of Senators and asked that the resolution be referred to the Committee on the Judiciary, realizing that if it went to the Committee on Privileges and Elections it would meet the same fate that other resolutions referred to that committee had encountered. That committee had been organized apparently for the purpose of preventing any such proposition being brought before the Senate. My resolution was in substance the same as those that had passed the House in 1898, 1900, and 1902. It changed section 3 of Article I of the Constitution and provided that—

> The Senate of the United States shall be composed of two Senators from each State chosen at a general election by the electors thereof for a term of six years.

I had some difficulty in obtaining a report on the resolution from the committee. On February 7, 1910, in the open Senate, I inquired of Mr. Clark, of Wyoming, the chairman, as to the probable time of a report. On February 14, 1910, I brought the matter up again, renewing my request for a report. On June 17, 1910, I moved to discharge the committee from further consideration of the resolution, and on the following day I spoke briefly to that motion, calling attention to the fact that 37 States had declared practically for direct election of Senators—33 by resolution of their legislatures asking for such a change in the Constitution and 4 others by adopting primary systems for the nomination of Senators. Up to that time I had received little encouragement from the committee as to its probable report.

The resolution had one very ardent friend on the committee, Mr. W. E. Borah, the junior Senator from Idaho. During this long period

of delay Mr. Clark had advised me that he was going to appoint a subcommittee to consider the measure and kindly asked if there was any member of the committee that I was especially desirous of having on that subcommittee. I told him I would be greatly pleased if he would make Mr. Borah one of its members. This he did, and every friend of the measure should feel grateful to Mr. Clark for so doing; for, if it had not been for Mr. Borah's tireless work in behalf of the resolution, in my judgment it would have died in the committee, as most of its predecessors had done.

The subcommittee consisted of Mr. Dillingham, of Vermont; Mr. Rayner, of Maryland; and Mr. Borah. Dillingham was opposed to any resolution changing the present method of electing Senators. Rayner was opposed to the resolution in the form that I had introduced it and wanted it in the same form as passed by the House in 1893. Borah was anxious and determined to get some kind of a report.

At the time the resolution was reported in that form none of us realized what were to be the serious results of this change in its provisions. As introduced, it provided only for changing section 3 of article 1, which relates to the election of Senators. As reported, it not only changed the method of electing Senators but also changed section 4 of the same article, thereby taking from the Federal Government all control over the times and manner of electing Senators.

Section 3 now provides that:

> The Senate of the United States shall be composed of two Senators from each State, chosen by the legislature thereof, for six years; and each Senator shall have one vote.

My resolution simply proposed to amend this section by substituting for the words "chosen by the legislature thereof." the words "chosen at a general election by the electors thereof," so that it would read:

> The Senate of the United States shall be composed of two Senators from each State, chosen at a general election by the electors thereof for a term of six years.

It did not change section 4 in any way, thereby leaving the Federal authority over the times and manner of holding elections just as it is now and as it has been since the Constitution was written by the fathers of the Republic. Section 4, which the committee sought to change, reads:

> The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to places of choosing Senators.

The committee resolution proposed to strike out the following clause in this section: "but the Congress may at any time by law make or alter such regulations." There is no reason for striking out those words because of the change in the method of electing Senators. They confer a power on the Federal Government in the matter of electing Senators, and that power is just as essential whether the Senators are elected by a direct vote or by the legislatures. The truth is that the power conferred upon the General Government under section 4 has not often been used; but that is not a valid reason for taking it away. In 1866 it was made the basis of important legislation in fixing the times when the legislatures should elect their Senators.

J. P. Stockton, of New Jersey, had been elected by the New Jersey Legislature and commissioned by the governor, though he had received only a plurality—not a majority—of the votes cast in the legislature. A contest was made and his right to a seat questioned. On March 23, 1866, a vote was taken and Stockton was permitted to retain his seat by a majority of one, he himself casting that vote. The impropriety of counting Stockton's vote for himself and the danger of the precedent of seating a Senator elected only by a plurality of the votes in the legislature caused intense criticism, and three days later the Senate reversed its action and Stockton was deprived of his seat.

Then a law regulating the times and manner of holding senatorial elections was enacted. It provided that on the second Tuesday after the meeting and organization of a legislature, when a Senator is to be elected, the two houses shall meet separately and by a viva-voce vote name a Senator. On the following day the two houses shall meet in joint assembly and the results of the voting shall be canvassed. If each house has given a majority vote to the same man he is elected; if not the joint assembly shall meet at noon of each succeeding day during the session and take at least one vote—until a Senator shall be elected. Since that time every Senator who has been elected has been chosen under this statute.

On January 11, 1911, over a year after the resolution was referred to the committee, it reported the substitute for the resolution I had introduced, which substitute took from the Federal Government the authority granted it by section 4 of article 1. This provision became a source of animated discussion. Mr. Sutherland, of Utah, a member of the committee, offered an amendment striking out that part of the resolution repealing the clause in section 4; and after a heated debate running through several weeks that amendment was adopted, receiving all the Republican votes but eight and one Democratic vote.

THE FIGHT OVER SECTION 4.

A number of Republicans voted against the Sutherland amendment because they believed the resolution would receive more votes in the Senate with the part repealing section 4 in than if it were stricken out, and though not in sympathy with the change curtailing the Federal power, they felt that it was better to have the resolution passed—even if it changed section 4—than not to pass it at all; so they yielded their judgment in regard to the advisability of changing that section rather than endanger the passage of the resolution.

The vote on the resolution was had on the 28th of February; but previous to that Senator Root had made an inflammatory speech against the South because of the method employed by the Southern States in depriving negroes of the right of suffrage. Senator Bacon had replied with equal animation. These two Senators, both of whom were opposed to the proposition, because of their prominence and the ability with which they thrashed over the negro question and the old State-rights doctrine, attracted a great deal of attention to that part of the resolution reported by the committee which repealed the clause in section 4. Senator Borah in an extended speech in the Senate took the position that the change in section 4 would not have the effect claimed by either Senator Root or Senator Bacon.

Unfortunately, as a result of this debate, it became apparently more of an issue as to whether section 4 should be changed than as to whether we should change the method of electing Senators. There are a great many people in the country who sincerely and earnestly believe that it would be unfortunate and dangerous to take from the Federal Government the power given it by section 4; and since this is not a new power granted by one of the amendments that grew out of the slavery controversy and the Civil War they can not understand why southern Senators and Congressmen should demand its repeal. Why should we now go back and take from the Federal Government an authority that was given it by its original framers unless there appears to be some valid reason for taking from the General Government that power?

An intense race prejudice exists in the South, and to array this prejudice against the amendment as it passed the Senate was not improbably the purpose of some Senators who opposed the resolution. They not only appealed to the race prejudices, but also to the doctrine of State rights, which is still dear to many southern Democrats. These foreign questions were injected into the discussion in the Senate and used by the Senators who are opposed to the direct election of Senators.

I do not believe section 4 should be changed. I think the Federal Government ought to have the power that it confers. I think it was of vital concern in 1866, when the Stockton controversy was up. At one time I was ready to sacrifice my belief in that respect if by so doing I could get the resolution changing the method of electing Senators adopted, because I considered that of the most vital consequence to our country. One thing is certain, the Senate must become more responsive to public opinion than it has been in recent years, and it will be made so by the American people even if they have to nullify the provision in the Constitution relating to the election of Senators, by passing State laws, such as the Oregon law, which requires the people of the State to select at the general election a candidate for United States Senator whom the legislature is practically directed by State statute to elect. The people will govern this country and protect themselves from the powers of greed and avarice in spite of the Constitution if they have to. This they have done in the election of their Presidents, and in time they will do so in the election of their Senators.

VICTORY AFTER COUNTLESS DEFEATS.

On February 28 the resolution came to a vote. For more than half a century every device known to parliamentary practice had been resorted to to prevent the Senate from taking a record vote on the proposition; but at last the vote was taken, and the resolution was defeated, the vote being 54 for and 33 against. Two-thirds being required, it lacked 4 votes of having a sufficient number.

The new Congress was convened by the President on April 4, and 10 Senators who had voted against the resolution had retired. From careful inquiry I learned that at least 6 of the 10 new Senators would have voted for the resolution if they had been members of the Senate when the vote was taken. So I determined, with the convening of the Senate, immediately to introduce the resolution in the same form as it had been voted upon, feeling certain that if we could get it to a

vote again in that form it would pass without question. So on April 6 I introduced the resolution. It was again referred to the Committee on the Judiciary.

Meantime the House of Representatives had passed a resolution in the same form as it was reported to the Senate by the Senate committee at the former session. This House resolution, when it came over to the Senate, was also referred to the Senate Committee on the Judiciary, and that committee promptly reported out the House resolution in lieu of the one I had introduced. I at once offered the resolution in the form I had introduced it, and as voted upon at the former session, as a substitute for that reported by the committee, feeling confident not only that it was the best form, but that it would be more certain of passage in that form than in any other.

This substitute, commonly called the Bristow amendment, was debated with the same animation as had been the amendment offered by Mr. Sutherland at the former session. Mr. Bacon, of Georgia, led the opposition, claiming that it was conferring upon the Federal Government authority to enact force bills and send armies and United States marshals into Southern States to intimidate voters, though the Senator from Georgia must know that there never have been and never will be United States troops or marshals sent to the South under section 4, if it remains in the Constitution. It was not under the powers conferred by that section that President Grant sent troops to supervise southern elections, but under the fourteenth amendment.

Many extravagant assertions were made as to the results of electing Senators by a direct vote without changing section 4—the same old play upon sectional prejudices was indulged in. So vigorous was the attack by a number of opponents of the resolution that an impression was created in many sections of the country that I was trying to add new powers of control to the Federal Government, when, in fact, I was only seeking to preserve in the Federal Government an authority that it has had since the beginning.

On the adoption of the substitute there was a tie vote in the Senate, the Vice President casting the decisive vote in its favor, so that the resolution came before the Senate for final action on June 12, 1911, in exactly the form in which it was voted upon on the 28th of February last. This time it carried by a vote of 64 for and 24 against, receiving 5 more than the two-thirds, thus confirming the judgment of the Senators who believed it was more certain of passage in that form than in any other. If the substitute had not been adopted, from the most accurate information the resolution would have lacked two or three votes of a sufficient number to pass.

The passage of the resolution was a great triumph. After 85 years of agitation both Houses had agreed that Senators should be elected by a direct vote instead of by the legislatures. The Senate, however, having rejected the change in section 4, as provided by the resolution that had passed the House, the bill went to conference—and there it remained, the representatives of the two Houses disagreeing on the paragraph repealing a part of section 4. Mr. Rucker, of Missouri, was the chairman of the committee of the House, and he, after months of conference, finally recommended to the House that it accept the Senate resolution. This he could very consistently do, for, as a Member of the House in 1900, he voted in favor of the resolution that then passed, which is substantially the same as that which passed the Senate this year.

Champ Clark, present Speaker of the House, was also a Member of Congress in 1900, and he voted for the resolution as it then passed, which was substantially the same as the Senate resolution. So did Underwood, of Alabama; Burleson, of Texas; Clayton, of Alabama; Newlands, of Nevada; Kitchin, of North Carolina; Livingston, of Georgia; Lloyd, of Missouri; Stephens, of Texas; Taylor, of Alabama; and Williams, of Mississippi—all, with the exception of Livingston, of Georgia, now Democratic leaders in Congress. Senators Williams and Bankhead were both Members of Congress in 1900 and voted for the resolution, but as Members of the Senate this time they both voted against the resolution, because it did not repeal the clause in section 4.

From this record it clearly appears that these Democratic leaders in the past favored the resolution for the direct election of Senators in practically the exact form in which it passed the Senate. It is very fortunate that Mr. Rucker and his Democratic advisers yielded the point, for otherwise by holding up this great national reform in order to force a change in section 4 they would have shifted the entire controversy from the question as to whether the people shall elect their Senators by a direct vote to that of the advisability of taking from the Federal Government the control over the election of Senators that the Fathers of the Republic gave it when they framed the Constitution.

On May 13, 1912, the House voted on Mr. Rucker's report and the resolution passed by a vote of 237 for to 39 against. This overwhelming vote of the House was exceedingly gratifying to the friends of the measure, and Mr. Rucker deserves high praise for his earnest devotion to this great cause. The resolution as finally passed leaves the Federal Government with the same authority to regulate the election of Senators that it now has over the election of Members of Congress.

Congress, at the extra session of 1911, passed a corrupt-practices act requiring every candidate for the Senate, not only in a State primary, but before a State legislature, to declare under oath before and after the primary, and before and after the election, the amount of money he has expended. Promises of political patronage of any kind are forbidden.

The authority that the Federal Government has to enact such a corrupt-practices act is conferred by the Constitution in the very provision of section 4 that it was sought to repeal, and we certainly should not have taken any course that would weaken the Federal Government in enforcing such a statute. We do not believe that anyone, after reflection, who favors the direct election of Senators would want the authority of the Federal Government so changed.

Congress now having acted, it is hoped that the State legislatures will ratify the resolution as promptly as possible, so that the people may enjoy the fruits of this great reform. An effort may be made in some sections of the country by those who are opposed to the change in the method of electing Senators to stir up opposition because of some side issue, but I have faith in the judgment of the great mass of the American people and believe that they will eagerly avail themselves of the opportunity to bring the Senate nearer to the people and make it more quickly responsive to the public will, and that the amendment will be speedily ratified

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